

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

July 23, 2009

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, July 23, 2009, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Darrell Downing, Chair; G. Nelson Van Fleet, Vice Chair; David Dennis; Shawn Farney; David Foster; Bud Hentzen; Joe Johnson (Out @3:40 P.M.); Ronald Marnell; John W. McKay Jr.; Debra Miller Stevens; M.S. Mitchell and Don Sherman (Out @3:59 P.M.). Hoyt Hillman and Bill Johnson were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Derrick Slocum, Associate Planner; Joe Lang, Chief Deputy City Attorney; Bob Parnacott, Assistant County Counselor; and Lisa Estrada, Recording Secretary.

1. Approval of the July 9, 2009 MAPC meeting minutes:

MOTION: To approve the July 9, 2009 Minutes as corrected.

MITCHELL moved, **MILLER STEVENS** seconded the motion, and it carried (12-0).

2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS

- 2-1. **SUB 2009-37: One-Step Final Plat -- W&M KRAMER FIRST ADDITION**, located on the east side of 183rd Street West and north of 39th Street South.

NOTE: This is unplatted property located in the County within three miles of the City of Wichita. It is in an area designated as "Rural" by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Goddard Area of Influence.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently located within the Sedgwick County Rural Water District No. 4. If service is available, feasible and the property is eligible for service, County Code Enforcement recommends connection.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. County Engineering has requested that the limits of the Floodway Reserve be denoted by a dashed line. The plat's text shall denote the creation of the floodway reserves in addition to including the standard floodway language. The floodway reserve should be increased in the northwest portion to cover possible erosion at the bends in the offsite drainage from the culverts. A routing is needed for the offsite water from the south to the main channel.

- E. The 20-foot utility setback on the west side should be labeled as a utility easement.
- F. County Surveying has advised that a benchmark is needed.
- G. County Surveying has requested that the distance along the north section line be shown.
- H. County Surveying has requested that the bearing and distance along the west section line be denoted.
- I. County Surveying has requested that the bearing and distance along the south line of Reserve A be denoted.
- J. County Surveying advises that the bearings and distances should be legible.
- K. County Surveying has requested that the surveyor who set the monuments be denoted.
- L. The plat denotes two openings along 183rd St. West. County Engineering has approved the access controls. The plat's text shall state that Reserve A includes a contingent street dedication to become effective upon the creation of a fourth building site.
- M. The joint access opening shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- N. Sedgwick County Fire Department advises that the plat should meet the requirements of the Sedgwick County Service Drive Code.
- O. Sedgwick County Fire Department requests a turnaround within Reserve A.
- P. Sedgwick County Fire Department requests a maintenance agreement regarding Reserve A in accordance with the Sedgwick County Service Drive Code. The plat's text needs to be revised to reflect maintenance of Reserve A by both Lots 1 and 2.
- Q. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineer (USACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.
- R. A covenant shall be submitted regarding Reserve A, platted for private drive purposes, which sets forth ownership and maintenance responsibilities of the private drive.
- S. The title block needs revised to reference "Final Plat".
- T. The setbacks from the property line between Lots 1 and 2 shall be labeled.
- U. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- V. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the

Fire Department.)

- W. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- X. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Y. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Z. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- AA. Perimeter closure computations shall be submitted with the final plat tracing.
- BB. A compact disc (CD) should be provided which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

J. JOHNSON moved, **HENTZEN** seconded the motion, and it carried (12-0).

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- 2-2. SUB 2009-42: One-Step Final Plat -- WAL-MART ADDITION**, located north of Kellogg and west of Hoover Road.

NOTE: This is a replat of The Landing 2nd Addition, Air Park 2nd Addition, and Air Park 3rd Addition. This site is also contained within The Landing CUP (CUP 2002-37, DP-150).

STAFF COMMENTS:

- A. City of Wichita Water Utilities Department advises that sewer and water services are available.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the applicant's drainage plan.
- D. The plat proposes two access openings along Julia, and three access openings along Dugan in

accordance with the CUP approval. Two openings along Taft for both Lots 1 and 2 were approved per the CUP and need to be denoted on the plat.

- E. The platlor's text shall include reference to "a block" in the owner's certificate.
- F. The interior lot line should be a solid line.
- G. County Surveying advises that the platted easements along the west 20 feet of Lot 1, The Landing 2nd Addition and the west 10 feet of Air Park 3rd Addition were vacated on Doc/Film-PG: 29059985.
- H. County Surveying has requested the following revisions to various easements:
 - L21 does not point to the centerline.
 - L20 and L24 need located east-west.
 - L13 and L14 need to define the length between what two points.
- I. County Surveying requests a correction to the centerline arrow for the 20-foot sanitary sewer easement (Film 2733, Page 1617) which is pointing to the edge of an easement line (the easement near the northwest corner of Lot 1).
- J. County Surveying advises that the 20-foot sanitary sewer easement (Film 2733, Page 1617) needs its length dimensioned, 18.92 feet per document (the easement near the northeast corner of Lot 1).
- K. County Surveying advises that the south line of the plat needs dimensions to the south line of the northeast quarter section. If not measured, described or platted dimensions shall be shown.
- L. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- M. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- N. The perimeters of the proposed lots shall match the perimeters of the CUP boundaries. A CUP adjustment will need to be approved.
- O. A 70-foot setback along Kellogg for Lot 1 is denoted on the plat; however the CUP permits this setback to be 40 feet.
- P. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- Q. The signature line for the County Clerk needs to be revised to reference "Kelly B. Arnold".
- R. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- S. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the

conveyance of stormwater.

- T. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- V. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- W. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Y. Perimeter closure computations shall be submitted with the final plat tracing.
- Z. A compact disc (CD) should be provided which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

J. JOHNSON moved, **HENTZEN** seconded the motion, and it carried (12-0).

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- 2-3. SUB 2009-39: One-Step Final Plat -- CARRIAGE OAKS ADDITION**, located on the north side of 21st North and west of Greenwich Road.

NOTE: This is a replat of a portion of the Oak Creek 2nd Addition. The site has been approved for a zone change (ZON 2009-14) from GO General Office and LC Limited Commercial to SF-5 Single-family Residential. This site is also contained within the Oak Creek Community Unit Plan (DP-274).

STAFF COMMENTS:

- A. City of Wichita Water Utilities Department requests a petition for extension of water (transmission and distribution mains) and sewer (mains and laterals) to all lots being platted.

- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the drainage plan subject to revisions.
- D. The Applicant shall guarantee the paving of the proposed streets.
- E. Since this is a replat of a previous Addition involved with the ownership and maintenance of reserves for that Addition, but not being replatted by this Addition, the above covenants and/or other legal documents shall be provided which provides for this Addition to continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.
- F. The parking easements located within the reserves shall be referenced in the plat's text specifying that the easements are granted for residential parking only and that no obstructions shall be constructed or placed within the easements.
- G. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- H. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- I. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- J. The applicant shall submit a covenant that provides four (4) off-street parking spaces per lot that abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- K. "Lots, Blocks, Reserves and Streets" shall be referenced in the plat's text.
- L. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- M. GIS has approved the street names.
- N. The final plat tracing shall indicate the 20-foot required pipeline setback provided for in the pipeline easement agreement is a pipeline setback.
- O. The plat indicates a blanket pipeline easement for the area involved in this plat. The applicant will be submitting a restrictive covenant limiting development on the affected residential lots until the pipeline easement is confined.
- P. The Subdivision regulations discourage the inclusion of pipeline easements within the perimeter of residential lots. The applicant will be submitting a restrictive covenant identifying the pipeline easement.

- Q. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Westar Energy has requested the plat denote an existing 10-foot utility easement within Reserves A and B adjoining Oak Creek Parkway. A 10-foot utility easement is also needed in Reserve A adjoining Lot 8, Block 1.
- Y. A compact disc (CD) should be provided which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

J. JOHNSON moved, **HENTZEN** seconded the motion, and it carried (12-0).

2-4. SUB 2009-48: One-Step Final Plat -- B.G.'S 1ST ADDITION, located on the southwest corner of MacArthur and Hoover Road.

NOTE: This is a replat of the Gray's 6th Addition in addition to unplatted property to the north. The

north portion of the site is located in the County adjoining Wichita's city limits and annexation is required.

STAFF COMMENTS:

- A. As the north portion of the site is adjacent to Wichita's City limits, the Applicant shall submit a request for annexation. The final plat shall not be scheduled for City Council review until annexation has occurred.
- B. City of Wichita Water Utilities Department requests a petition for extension of sewer (mains and laterals) to all lots being platted. A petition is needed for the extension of water (distribution main) to serve lots 1-6.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. Due to the site being zoned LC Limited Commercial, a restrictive covenant shall be submitted specifying that the lots within this plat served by Gilda/Wickham shall be limited to residential uses.
- E. City Engineering has approved the applicant's drainage plan. The drainage easements should be referenced in the plat's text.
- F. The plat proposes complete access control along both Hoover and MacArthur Road.
- G. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street, drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- H. The applicant shall submit a covenant that provides four (4) off-street parking spaces per lot that abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- I. City of Wichita Water Utilities Department advises that a proposed wall easement along the east property line encroaches a 20-foot utility easement within Lots 3, 4 and 10. A Hold Harmless Agreement is requested with a removable wall where the wall easement encroaches the 20' utility easement.
- J. The wall easement needs to be referenced in the plat's text.
- K. The applicant shall guarantee the paving of the proposed interior street.
- L. GIS has requested MacArthur be spelled correctly.
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants

required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

- P. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Westar Energy has requested additional easements.
- V. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

J. JOHNSON moved, **HENTZEN** seconded the motion, and it carried (12-0).

3. PUBLIC HEARING – VACATION ITEMS

PUBLIC HEARINGS

- 4. Case No.: ZON2009-00021** - Adam Dominguez (Owner/Applicant) Request City zone change from SF-5 Single Family Residential to NR Neighborhood Retail on property described as;

Lot 9 except the South 10 feet for street, Block C, Anderson Acres Addition to Wichita, Sedgwick County, Kansas Generally located north and east of the intersection of North Meridian and 53rd Street West (2404 W. 53rd St. N.).

BACKGROUND: The applicant is requesting NR Neighborhood Retail ("NR") zoning on Lot 9, except for the south 10 feet for street, Anderson Acres Addition, located north and east of the intersection of

North Meridian and 53rd Street North. The site is currently zoned SF-5 Single-family Residential (“SF-5”), and is vacant. The site has approximately 100 feet of frontage along and access from 53rd Street North, a street classified as being a minor arterial.

The site is the last remaining non-commercially zoned property along the block fronting 53rd Street North, between North Meridian and Sedgwick Avenue. Properties between the subject site and Meridian Avenue are zoned LC Limited Commercial (“LC”). The applicant desires to rezone his property to NR, a less intense zone designation than LC which is a more appropriate zoning due to its close proximity to residentially zoned property, so that he may develop a building with office uses or a personal improvement type use.

Property to the east of the site is zoned SF-5 and is currently developed with a residence. Property located north of the site is zoned SF-5 and is currently undeveloped. Property south of the subject site, across 53rd Street North, is zoned LC and is developed with a warehouse/retail use. Property west of the subject site, is zoned LC and is developed with a convenience store.

CASE HISTORY: The site is Lot 9, except the south 10 feet for street, Anderson Acres Addition, Wichita, Sedgwick County, Kansas, which was recorded with the Register of Deeds August 27, 1951.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Vacant
SOUTH:	LC	Warehouse
EAST:	SF-5	Single-family Residence
WEST:	LC	Convenience Store

PUBLIC SERVICES: North Meridian Avenue is classified as a four-lane, paved principal arterial street. 53rd Street North, west of Meridian, is a paved two-lane collector street, while 53rd Street North east of Meridian, is a paved four-lane minor arterial. Traffic counts, according to the AADT Traffic Count Map revised in May 2007, counted traffic on North Meridian, at the intersection with 53rd Street North at 17,273 ADT’s (Average Daily Trips). Traffic counts along 53rd Street North, at the intersection with north Meridian Avenue are 9,897 ADT’s. Municipal water does serve the site; however, the site is not served by municipal sanitary sewer service. Sewer lines are located approximately 350 feet to the west of the subject site, across North Meridian Avenue.

CONFORMANCE TO PLANS/POLICIES: The “Wichita Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the requested rezoning tract as appropriate for “urban residential.” The “urban residential” category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The requested NR zoning and the uses permitted in it could be classified as both “urban residential” and “local commercial” especially since the uses allowed in the NR zone district reflect a mix of uses that are both allowed by right or by conditional use in residential and commercial zone districts. The “local commercial” category’s uses are local in their customer base and include: commercial, office, personal services, medical, auto repair, grocery stores, florist shops, service stations, restaurants and on a limited presence basis mini-storage warehousing and small scale light manufacturing. However, the subject site is bordered to the west and south, across 53rd Street North, by properties categorized as “local commercial” on the land use guide and commercial uses are common near major intersections. The Comprehensive Plan objective for commercial/office use for areas outside downtown Wichita (Objective III.B) is to “develop future retail/commercial areas which complement existing commercial activities provide convenient access to the public and minimize detrimental impacts to other adjacent land uses,” as well as Strategy III.B.6 which recommends that “traffic generated by commercial activities be channeled to the closest major thorough-fare with minimum impact upon local residential streets.” Strategy III.B.3 seeks to reduce the number of access points along arterial streets; implementation of this strategy is through the Access Management Policy.

Commercial Locational Guideline #1 of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. The proposed development complies with this guideline. Commercial Locational Guidelines #3 recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use; #5 commercially-generated traffic should not feed directly onto local residential streets; and #6 commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other appropriate areas such as the CBD fringe; segments of Kellogg; established areas of similar development; and, areas where traffic patterns, surrounding land uses and utilities can support such development.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request for the NR Neighborhood Retail (“NR”) zoning be APPROVED, subject to the guarantee of the extension of sewer service to the site prior to publication of the zone change.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property to the east of the site is zoned SF-5 and is currently developed with a residence. Property located north of the site is zoned SF-5 and is currently undeveloped. Property south of the subject site, across 53rd. Street North, is zoned LC and is developed with a warehouse/retail use. Property west of the subject site, is zoned LC and is developed with a convenience store.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned SF-5. The SF-5 zone district primarily restricts the site to residential uses. Given the existence of commercial and industrial uses immediately south and west of the application area, similar to the subject site, this site is becoming less desirable for infill residential development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested zone change of SF-5 to NR is in character with the area and would not detrimentally affect nearby property, of which most of it is zoned LC and is developed with warehousing, retail, convenience store or office type uses.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial presumably could cause the applicant a relative economic loss. Approval would introduce a small retail, office or personal improvement service use that could be used by the residences in the immediate vicinity of the application area.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “Wichita Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the requested rezoning tract as appropriate for “urban residential.” The “urban residential” category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The requested NR zoning and the uses permitted in it could be classified as both “urban residential” and “local commercial” especially since the uses allowed in the NR zone district reflect a mix of uses that are both allowed by right or by conditional use in the residential and commercial zone districts. The “local commercial” category’s uses are local in their customer base and include: commercial, office, personal services, medical, auto repair, grocery stores, florist shops, service stations, restaurants and on a limited presence basis mini-storage warehousing and small scale light manufacturing. However, the subject site is bordered to the west and south, across 53rd Street North, by properties categorized as “local commercial” on the land use guide and commercial uses are common near major intersections.
6. Impact of the proposed development on community facilities: Approval of the request should not

have a negative impact on community facilities; however, municipal sewer service is not available to this site at this time. Approval of this rezone request will be contingent on a guarantee of sewer extension to the site.

MOTION: To approve subject to staff recommendation.

MITCHELL moved, **HENTZEN** seconded the motion, and it carried (12-0).

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5. **Case No.: ZON2009-00022** - Wichita Area Technical College; Baughman PA, c/o Russ Ewy (agent) Request City zone change from SF-5 Single Family Residential to GC General Commercial on property described as;

A portion of Lot 1, Block A, USD 259 Addition, Wichita, Sedgwick County, Kansas described as beginning at the SE corner of said Lot 1; thence N90°00'00"W, along the south line of said Lot 1, 304.80 feet; thence N00°01'16"W, parallel with the west line of said Lot 1, 847.75 feet to a point 100.00 feet normally distant south of the north line of said Lot 1; thence N90°00'00"E parallel with the north line of said Lot 1, 301.52 feet to a point on the east line of said Lot 1; thence S00°14'36"E, along the east line of said Lot 1, 847.76 feet to the Point of Beginning. Generally located west of Seneca and north of I 235 (4141 N. Seneca).

BACKGROUND: The applicant is requesting GC General Commercial ("GC") on 5.9-acres of the SF-5 Single-family Residential ("SF-5") zoned 32-acre USD 259 Addition. The Wichita Area Technical College (WATC) currently has/had a truck driving and repair school, with a practice track on the property; a vocational school. A vocational school is not permitted in the SF-5 zoning district. The applicant proposes to rezone the portion of the property that has the only building on it, to get it in compliance with Unified Zoning Code (UZC), and possibly market this property for some commercial or office types of uses. The track remains SF-5 and out of compliance with the UZC.

The site has poor visibility from any arterial roads. The site has limited access (see "Public Services"), via Seneca Street, which is a paved, two-lane local street, with bar ditches running along its sides. Seneca ends at the old SF-5 zoned 52-acre Ripley Power Plant site, located approximately 470 feet north of the site. The Ripley site has not been used as a power plant for decades. The Ripley site still has power plant infrastructure, and is now used as a Westar training facility. Undeveloped SF-5 zoned property is also located north of the site. A LI Limited Industrial ("LI") zoned warehouse- office combination, a single-family residence (built 1920) and the LC Limited Commercial ("LC") zoned KPTS broadcasting dish are adjacent to the north side of the site. The rest of the SF-5 zoned WATC property abuts the north and west sides of the site. An isolated SF-20 Single-family Residential ("SF-20") zoned property abuts the west side of the SF-5 zoned portion (practice driving track) of the WATC land. There are four (4) SF-5 zoned single-family residences (1994-2001) built around a retired sand pit, located east of the site, across Seneca. A GC zoned playing field complex abuts the south side of the site. There are multiple CUP and Conditional Use overlays in the area. The Big Ditch marks the north and east boundary of the area and platted single-family subdivisions, located around retired sandpits are located adjacent to the west side of the SF-5 zoned WATC property. I-235 and K-96 highways mark the south side of the area.

CASE HISTORY: The site is located on a portion of the USD 259 Addition, which was recorded with the Register of Deeds May 10, 1979.

ADJACENT ZONING AND LAND USE:

NORTH:	LI, LC, SF-5	Warehouse-office combination, KPTS broadcasting dish, single-family residence, Ripley site, undeveloped
SOUTH:	GC	Playing fields
EAST:	SF-5, GC	Single-family residences around a retired sand pit, small garage

WEST: SF-5, SF-20 WATC practice driving track, undeveloped

PUBLIC SERVICES: The site's only access is Seneca Street, which is classified as a local street at this location. Seneca is a paved two-lane street with a 70-foot right of way at this location, which ends at the Westar Ripley Power plant site. Seneca intersects with 37th Street North, a minor arterial, approximately ¼ mile south of the site, after it crosses over the I-235 and K-96 highways. There are no municipal water and sewer services available to this site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Functional Land Use Guide classifies the site as "Major Utility / Transportation." It defines "Major Utility / Transportation" as encompassing utility and transportation facilities and includes a range of such uses as airports, landing strips, landfills, waste transfer stations, water treatment and sanitary sewer plant facilities. These types of uses generally require large amounts of land and generate specific conflicts associated with noise order and safety. The subject site is not large enough for the typical uses listed (above) for the Major Utility / Transportation classification.

Major Utility / Transportation locational guidelines only address airports and utility facilities. The proposed zoning on this site, does not anticipate this type of development, but serves as a zoning that could market this property for some commercial or office types of uses. The location of the site offers poor visibility for some commercial uses and development of the area around the site enforces this observation; playing fields, outdoor recreation associated with a church, single-family residences built around a retired sand pit, undeveloped SF-5 and SF-20 zoned properties, a warehouse- office combination, the KPTS broadcasting dish and the old Westar Ripley Power Plant site, which has not been used for decades. The Ripley site was approved for a 300-foot communication tower, July 9, 2009.

RECOMMENDATION: Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to a Lot Split within a year and the following provisions of a Protective Overlay:

- A. No off-site or portable signs shall be permitted on the subject property. No building signs shall be permitted along the north or west face of any building that is adjacent to any property that is zoned residential or abutting playing fields.
- B. Signs shall be in accordance with the City of Wichita sign code, with the exception that signs shall be monument-style and limited to 20 feet in height. No LED signs.
- C. Any new light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any abutting or adjacent properties that are in a residential zoning district. Light poles shall be limited to a maximum height, including the base of the light pole, of 15 feet. Light poles shall not be located within any setbacks.
- D. Outdoor speakers and sound amplification systems shall not be permitted. No buildings shall exceed one story in height with a maximum building height of 35 feet.
- E. All vehicle repairs shall be done inside buildings.
- F. A 6-8-foot masonry wall shall be located parallel to the north and west property lines of the subject site, where it abuts existing residential zoning. As long as the hedge on the south side remains, no masonry wall or solid screening is required. At such time that the hedge is taken out, or is thinned out a masonry wall will be put up on the south side of the subject site.
- G. Landscaping shall be installed that meets the Landscape Ordinance. A landscape plan shall be prepared by a licensed landscape architect, to be reviewed and approved by the Planning Department.
- H. Provide a site plan showing current development and, if needed proposed development.
- I. The Lot Split shall include 35-foot setbacks along the north, west and south sides. No paving, storage, parking, trash receptacles, or placement of equipment within the 35-foot setback.
- J. More extensive development of the site, beyond its current one building, is contingent on Public Works approving sewer and water for the site.
- K. All driveways, parking, loading and vehicle circulation shall be paved with concrete, asphalt or

asphaltic concrete.

- L. The following uses shall not be permitted: hotel or motel; pawn shop; rodeo; riding academy or stable; tattooing or body piercing facility; vehicle and equipment sales; asphalt or concrete plant; outdoor storage; vehicle storage yard; adult entertainment establishment; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; night club; indoor and outdoor recreation and entertainment; restaurant with or with drive-in or drive-thru facilities; service station; tavern and drinking establishment.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This site is zoned SF-5, but has been a campus of WATC; a truck driving and repair school. The area contains the old Ripley power plant infrastructure (not in use for decades), which is now used as a Westar training facility. The Ripley site was approved for a 300-foot communication tower, July 9, 2009. Undeveloped SF-5 zoned property is also located north of the site. A LI zoned warehouse- office combination, a single-family residence (built 1920) and the LC Limited Commercial ("LC") zoned KPTS broadcasting dish are adjacent to the north side of the site. The rest of the SF-5 zoned WATC's practice driving track abuts the north and west sides of the site. There are four (4) SF-5 zoned single-family residences (1994-2001) built around a retired sand pit, located east of the site. A GC zoned playing field complex abuts the south side of the site. There are multiple CUP and Conditional Use overlays in the area. The Big Ditch marks the north and east boundary of the area and platted single-family subdivisions, located around retired sandpits, are located adjacent to the west side of the WATC practice driving track. I-235 and K-96 highways mark the south side of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-5, but has been a campus of WATC's truck driving and repair school; a vocational school. With the zone change a portion of the site is suitable for its continued use as a vocational school. The proposed GC zoning is not out of character with this area, which contains abutting and adjacent GC, LI and LC zoning. These non residential zoning districts abut and are adjacent to a small number of SF-5 zoned single-family residences, undeveloped SF-5 and SF-20 properties, and the SF-5 zoned old Ripley power plant, which is now used by Westar for training.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed GC zoning and any subsequent non residential development on the site will be visible from some nearby residences. However, this site, with its large building with three bay doors facing east and its practice driving track, already had a non residential character. The site is well screened from all surrounding residences, by those residences' existing vegetation. Traffic generated by non residential development on the site, onto a local street, Seneca, is a concern. The proposed PO limits auto oriented development on the site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The 2030 Functional Land Use Guide classifies the Ripley site as "Major Utility / Transportation." It defines "Major Utility / Transportation" as encompassing utility and transportation facilities and includes a range of such uses as airports, landing strips, landfills, waste transfer stations, water treatment and sanitary sewer plant facilities. The proposed GC zoning on this site, does not anticipate this type of development, but serves as a zoning that could market this property for some commercial or office-warehouse types of uses. The location of the site has poor visibility for some commercial uses and development of the area around the site enforces this observation. The zoning request is not out of compliance with the Land Use Guide, but the limited access onto the site and its poor visibility probably limit commercial development opportunities.
5. Impact of the proposed development on community facilities: The site has no water or sewer services available to it. This will limit development to what it currently has on the site; one non

residential building, a kind of office-warehouse type of building. Traffic onto Seneca could be significant, but the proposed PO limits auto oriented development on the site.

BILL LONGNECKER, Planning Staff presented the Staff Report. He reported that DAB VI recommended approval of the item 5-0, amending provision "L" by adding recycling process centers as a prohibited use. He also noted that there was no quorum.

MITCHELL asked how the applicant chose 5.9 acres out of the 32 acres for this application. He asked if 5.9 acres was a requirement for a Community Unit Plan (CUP).

LONGNECKER said that in the past the MAPC has asked staff to look at CUPs when the site size is close to 6 acres. He said that because this site is already built with a non residential building and its parking area, the applicant felt it would be better to address the application with a Protective Overlay (PO) rather than a CUP. He said the agent for the applicant was present to answer any questions.

MITCHELL asked staff to explain the difference in the requirements between a PO and a CUP.

LONGNECKER briefly reviewed the differences between the two types of zoning, including maximum buildable area and architectural controls.

MITCHELL asked then they can't add more buildings to the site?

LONGNECKER replied that provision "J" prohibited any more development on the site, contingent on Public Works approving sewer and water for the site.

MITCHELL clarified then further development would not be permitted without additional water and sewer.

LONGNECKER added that he did not see those services being extended into this area for a while, because of undeveloped land between the site and available services. He noted the closest water and sewer was located in partially developed platted single-family residential subdivisions, located to the west of the site.

MITCHELL commented that if services came from any other direction they would have to cross the river, two levees and the highway.

RUSS EWY, BAUGHMAN COMPANY, AGENT FOR THE APPLICANT said when they look at CUP's they are typically thinking about a broad range of multiple uses. He said this site would more than likely be developed for a very specific use, because of its location. He said the Unified Zoning Code allows for a PO and in working with this site, they were all in agreement that a PO was an equally effective manner to protect the homes on Seneca to the east as well as outline some restrictions on the property. He said they were not trying to duck any CUP requirements, they just did not feel it was necessary on this particular site. He concluded that they expected no additional expansion on this site.

MITCHELL asked how they would develop the area to the west of the site.

EWY said it was his understanding that the balance of the 33 acre site is close to being closed on by the developer to the west and would no longer be in the ownership of the applicant. He said the contracts have been negotiated. He said they expect the balance of the site to be incorporated into developments further to the west. He said he cannot tell them the manner in which the developer plans to use the remainder of the land.

J. JOHNSON clarified that the applicant/agent would have no problem adding the restriction of no recycling center.

EWY said the restriction was on recycling/processing centers. He said they were okay with that restriction.

MCKAY asked about the proposed use.

LONGNECKER said the 2030 Functional Land Use Guide classifies this area as a major utility transportation area. He said they have listed typical uses including airports, landing strips, landfills, waste transfer stations, and water treatment facilities. He said he thought it was reasonable to speculate that the area was classified that way because of the existence of the defunct Ripley Power Station and the fuel storage tanks to the northeast within the confines of the river, but he said he has not talked to the Land Use Division staff about that classification in that area.

MCKAY said without a specific use listed, he is having a problem because the applicant is asking for an overlay which means they want to deviate from what is typically allowed under the requested zoning.

DIRECTOR SCHLEGEL asked if the verbiage on the first page of the Staff Report was staff's or the applicant's.

LONGNECKER said it was the applicant's.

EWY said the information on the front page of the Staff Report is not what was on the application, but in defense of staff noted that the Wichita Area Technical College (WATC) had facilities on ground that was not properly zoned that they wanted to take care of. He said the intention of the application was to remove the legal nonconforming use designations. In addition, he said if they choose to sell the properties in the future, he said they want the properties to have marketable uses. He commented that the Limited Commercial (LC) zoning is more of a retail district and that the General Commercial (GC) zoning allows more uses that do not require high visibility or generate high traffic counts, such as a contractor's yard. He said they were looking for alternative land uses, something that does not generate a lot of traffic, in the event WATC sells the property.

MITCHELL asked if the applicant needed all 5.9 acres.

EWY said yes, because of the way the site was developed with the nonresidential building and its parking.

MITCHELL commented on the appropriateness of the zoning being requested if the area to the west was developed as single-family residential.

Responding to **MITCHELL's** comment regarding the appropriateness of the application, **EWY** said the owner to the west attended the DAB hearing on the application and is in agreement with what is being proposed.

MCKAY commented then WATC is now in the land speculating business.

EWY said it was his understanding that WATC still intended to utilize the building, but not the driving course.

MITCHELL acknowledged the DAB's support of the application; however, he said he did not feel this was good land planning and specifically mentioned poor access into the area if it were to be used for commercial purposes. He said he would not support the application as presented.

MOTION: To disapprove the application.

SUBSTITUTE MOTION: To approve subject to staff recommendation.

MARNELL moved, **J. JOHNSON** seconded the motion, and it failed (6-6).
DOWNING, FARNEY, MCKAY, MILLER STEVENS, MITCHELL, VAN FLEET
– No.

MCKAY moved, **MITCHELL** seconded the original motion to disapprove the application, and it failed (6-6).

DENNIS, FOSTER, HENTZEN, J. JOHNSON, MARNELL, SHERMAN – No.

DIRECTOR SCHLEGEL clarified that the item would be presented to the City Council as failed to be approved by the MAPC.

MILLER STEVENS recused herself from the item stating that she lived in the notification area and left the bench.

6. **Case No.: ZON2009-00023 and CON2009-00018** - Wichita Area Technical College, c/o Ray R. Frederick Jr (owner); Baughman Company, PA. c/o Russ Ewy (agent) Request City zone change from TF-3 Two-Family Residential to GO General Office and City Conditional Use for Vocational School on property zoned GO General Office on property described as;

Lots 1, 2, 3, 4, 5, 6, 7 and the west half of Lot 8, and the west half of Lot 23, and all of Lots 24, 25, 26, 27 and 28, in Block 2; also Lots 1, 2, 3, 4, and the west 35 feet of Lot 5, and all of Lots 20 and 21, and all of Lot 22, except the south 50 feet thereof, in Block 3, all in Schweiter's Tenth Addition to Wichita, Sedgwick County, Kansas, TOGETHER WITH the vacated part of Boston Avenue as platted in Schweiter's Tenth Addition to Wichita, Sedgwick County, Kansas, from the east line of George Washington Drive to a North-South line formed by the extension of the east line of the West 30 feet of Lot 23, Block 2, Schweiter's Tenth Addition extended south to the south right-of-way line of Boston Avenue. Generally located east of George Washington Boulevard, between Grail Street and Wilma Street.

BACKGROUND: The applicant proposes to rezone a 4.85-acre parcel from TF-3 Two-Family Residential ("TF-3") to GO General Office ("GO") and allow a Conditional Use for Vocational School on the site located east of George Washington Boulevard between Grail Street and Wilma Street. The site is approximately one block north of Harry Street.

The requested Conditional Use mimics the current use of the property as a vocational school facility for Wichita Area Vocational Technical College ("WATC"). The site was originally operated as an elementary school by USD #259. When the elementary school was closed, the use of the building was shifted to providing space for vocational school curricula operated by USD #259. WATC now operates separately from the school district. While the property was operated as an elementary school by USD #259, it was a by-right use in the TF-3 zoning district. The first available district that allows a vocational school is GO with a Conditional Use. The Unified Zoning Code does not contain specific criteria for this type of Conditional Use, thus relying on the use to be compatible with the neighborhood.

The site plan shows the main school building for classroom instructional space, a parking lot, and seven small buildings. Three of these buildings are older wood-frame annex classroom buildings, one is a small garage and three are greenhouse buildings, which supported the use of the center for vocational training in the nursery business in the past.

Single-family residences, located on property zoned TF-3 are located to the north, northwest, east and southeast of the site. A small apartment building with GO and B Multi-Family Residential (“B”) zoning is located to the south of Wilma Street. Quadplexes on property zoned MF-29 Multi-Family Residential (“MF-29”) and a medical office on property zoned GO are located west of George Washington Boulevard. Along Harry Street a block to the south, the property is zoned LC Limited Commercial (“LC”) and in commercial use.

CASE HISTORY: The site is located on the western portions of Blocks 2 and 3, Schweiter’s 10th Addition, platted April 4, 1949. The western 350 feet of Boston Street from George Washington Boulevard was vacated to provide a cohesive site for the school. Boston Street now runs from Hillside to Lorraine (a narrow lane), which connects to Grail Street.

ADJACENT ZONING AND LAND USE:

NORTH:	TF-3	Single-family residences
EAST:	TF-3	Single-family residences
SOUTH:	GO, B, TF-3, LC	8-unit apartment building, single-family residences, retail
WEST:	MF-29, GO, LC	Quadplexes, medical office, restaurant

PUBLIC SERVICES: The site has direct access onto Grail Street, a local residential street, from George Washington Drive, which is a frontage street along George Washington Boulevard. George Washington Boulevard is a major arterial. 2007 traffic flow volumes were 3,765 on the southbound leg at Harry. The northbound volumes were between 6,500 south of Harry to 4,400 at George Washington Boulevard ¼ mile north at Lincoln Street.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide, Map as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “Institutional.” The use as a vocational school is generally considered more commercial and more intensive than an elementary or secondary school and different from a typical college or university, more often the learning of trades involving the use of equipment or tools not generally associated with an elementary, middle, high school or university. However, the building originally transitioned from use as an elementary school to a vocational school while the vocational training segment was part of the USD #259 program component for secondary education. As a result, the requested application could be considered a continuation of an existing use.

RECOMMENDATION: Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject the following conditions:

- A. APPROVE the zone change (ZON2009-00023) to GO.
- B. APPROVE the Conditional Use (CON2009-00018) subject to the following conditions:
 - 1. The site shall be operated in conformance to the approved site plan.
 - 2. The use of the site shall be limited to those uses permitted by right in the TF-3 zoning district and to a “vocational school,” “office, general” and “medical offices.”
 - 3. The only outdoor vocational training that shall be permitted is horticultural/nursery training in conjunction with greenhouse facilities and within the enclosed fence.
 - 4. No equipment shall be used that creates noise, vibration, electrical interference, smoke or particulate matter emission, or odors that are in excess of ordinary and usual conditions prevailing in the immediate neighborhood as determined by the Zoning Administrator.
 - 5. There shall be no outdoor storage of equipment, including but not limited to construction equipment, materials or vehicles used in the Conditional Use.
 - 6. The site shall be in conformance with property development standards and site development requirements of the Unified Zoning Code, including but not limited to: parking, screening,

setbacks, heights, etc. and the Landscape Ordinance. Any additional development on the property also shall be in compliance with compatibility standards.

7. In the event of any parking lot expansion, the main entrance shall be relocated to George Washington Boulevard.
8. Any expansion or addition to the existing facilities from that shown on the site plan (one principal structure, three wooden buildings, three greenhouses and one garage) shall require approval per the Unified Zoning Code for amendment to the Conditional Use, unless the modification is of minor nature and scope so as to be within the parameters of an administrative approval.
9. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Single-family residences, located on property zoned TF-3 are located to the north, northwest, east and southeast of the site. A small apartment building with GO and B Multi-Family Residential ("B") zoning is located to the south of Wilma Street. Quadplexes on property zoned MF-29 Multi-Family Residential ("MF-29") and a medical office on property zoned GO are located west of George Washington Boulevard. Along Harry Street a block to the south, the property is zoned LC Limited Commercial ("LC") and in commercial use.
2. The suitability of the subject property for the uses to which it has been restricted: The site is suitable for a school and other uses in the low-density residential land use category typical of TF-3 zoning. The most immediate neighbors to the north and east are single-family residential.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The Conditional Use incorporates provisions that keep the property operating in essentially the same manner as today, to mitigate additional effects on the surrounding neighborhood.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide, Map as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "Institutional." The use as a vocational school is generally considered more commercial and more intensive than an elementary or secondary school and different from a typical college or university, more often the learning of trades involving the use of equipment. However, the building originally transitioned from use as an elementary school to a vocational school while the vocational training segment was part of the USD #259 program component for secondary education. As a result, the requested application could be considered a continuation of an existing use.
5. Impact of the proposed development on community facilities: The channeling of traffic onto the local residential street is the most immediate impact; this could be lessened by future rerouting of the circulation directly to George Washington Drive if the parking lot is reconstructed or expanded.

DONNA GOLTRY, Planning Staff presented the Staff Report. She noted an error under condition # 5 and asked the Commission to substitute the term "Conditional Use" for "Home Occupation". She said she has had at least five phone calls in opposition to the proposal. She also referred Commissioners to a handout letter which expressed concerns regarding traffic and parking. She said the applicant, agent and she believed neighbors were present at this meeting. She concluded by stating that the case will be heard by DAB I on Monday, August 3, 2009.

FOSTER asked **GOLTRY** to more clearly define the traffic problem. He asked was it traffic from the east or George Washington Boulevard.

GOLTRY said the only direct access onto the site is Grail Street, which is a residential street. She said she has heard from residents that people are parking on the street and she does not know if that is because there is insufficient parking at the school or because it is easier for people to park along the street. She commented that school isn't in session right now so it was hard to measure that.

FOSTER asked when use of the site does change, would that come back for staff review in the form of a site plan.

GOLTRY said as long as the uses continue to be vocational school activities, reestablishment of horticulture activities, activities inside the building and not outside, or medical or general office; those uses could be established without any additional review. She said if they should want to make major modifications to the site plan or establish other uses, an amendment would be required.

RUSS EWY, BAUGHAMN COMPANY AGENT FOR THE APPLICANT said they are in agreement with staff comments.

MITCHELL asked about the unpaved drive.

EWY said it is a simple pathway back to the green houses and doesn't function as part of the parking lot or any type of access onto the site.

JOHN STEVENS, 3125 E. BOSTON said his house was a block away from the property and that he was representing the Schweiter East Neighborhood Association. He said the neighborhood is okay with the way the property is currently being used. He said if the zoning is changed without keeping the Conditional Use for a school operation, the neighborhood may end up with an undesirable occupational use of the facility. He said things are changing with completion of the new training complex at Jabara Airport. He said WATC will probably move this operation and sell this facility for some other use. He said that concerns the neighborhood. He said Parallax Rehabilitation is located at Hillside and Lincoln and that those folks walk the neighborhood streets. He said he does not believe WATC is telling them what they want to do with the property. He asked that the MAPC guarantee use of the property for school use only and require a prospective purchaser to request their own zoning change. He concluded by requesting that if the zoning is changed to GO, require the owner to update the parking and anything else that is required with that zoning.

EWY said the proposed PO developed by staff does have those types of triggers that would bring any type of redevelopment into conformance with any Code requirements.

MITCHELL asked if there was a technical reason why the parking lot could not be moved to the George Washington side.

EWY said there were areas in the site plan that could accommodate additional parking.

MARNELL said he understood what they were trying to do. He said this is located in the middle of a residential area, quite different from the previously reviewed application. He said it seemed to him that there was no reason to add medical and general office as allowed uses. He said he opposed those two uses if the facility is still going to be used as a vocational school. He said if the property is sold, then that owner needs to come back to the Commission to see if any other proposed use is appropriate.

MOTION: To approve subject to staff recommendation and the elimination of office, general and medical offices under item #2 in the conditions.

MARNELL moved, **MITCHELL** seconded the motion, and it carried (10-1-1)
HENZEN – No. **MILLER STEVENS** – Abstained.

MILLER-STEVENS back on the bench.

7. **Case No.: DER2009-00004** - Request a public hearing regarding a proposed amendment to the Wichita-Sedgwick County Unified Zoning Code dealing with the creation of a new use type, motor vehicle impound lot and allowing said use to be allowed as a permitted use in the LI Limited Industrial and GI General Industrial districts, subject to specified supplementary use regulations.

Generally located City and County wide.

BACKGROUND: At a recent Metropolitan Area Planning Commission (MAPC) meeting planning staff was asked to review our current regulations regarding the storage of motor vehicles. The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines the following terms:

Vehicle Storage Yard: the keeping outside of an enclosed building for more than 72 consecutive hours of one or more vehicles (except inoperable vehicles), boats, trailers, or unoccupied recreational vehicles. The term vehicle storage yard does not include “wrecking/salvage yard.”

Vehicle, Inoperable: any vehicle that is unable to operate or move under its own power. It shall also mean any vehicle that is in an abandoned, wrecked, dismantled, scrapped, junked or partially dismantled condition which includes having uninflated tires, no wheels, or lacking other parts necessary for the normal operation of the vehicle. It shall also mean any vehicle that because of mechanical defects, a wrecked or partially wrecked frame or body or dismantled parts, cannot be operated in a normal and safe manner. An inoperable vehicle shall not include vehicles needing only the installation of a battery or the addition of fuel to operate.

Wrecking/Salvage Yard: a lot, land or structure, or any part thereof, used for the collecting, dismantling, storing and / or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk, or discarded materials; and / or for the sale of parts thereof. Typical uses include motor vehicle salvage yards and junkyards. In the unincorporated area of the county only, the term “wrecking / salvage yard” shall not include the storage of salvage materials as permitted in Section 19-22(c) of the Sedgwick County Code.

The circumstance that triggered the Planning Commission’s request to review this issue was the recent filing of three applications for “wrecking and salvage” by individuals who provide vehicle towing and impound services and/or conduct auto insurance pool auctions. Some vehicles taken to these businesses are inoperable, and may be stored up to three or four months, without any intention of repairing the vehicle, before they are removed from the site. The vehicles are not dismantled or parted out, only stored, but because the business stores inoperable vehicles for longer than 72 hours, by UZC definition, the activity is categorized as “wrecking and salvage.” Wrecking and salvage uses are only permitted with “conditional use” approval in the LI Limited Industrial (“LI”) and GI General Industrial (“GI”) districts, and is permitted “by right” in the AFB district.

CON2008-53 and ZON2008-55 were Sedgwick County applications for LI zoning and a conditional use for “wrecking and salvage” on property located on the west side of Rock Road at 43rd Street South. The applicant runs an auto insurance pool auction business that requires the storage of inoperable vehicles

until they are sold. Planning Staff recommended denial of the request and the MAPC also recommended denial by a 6 to 5 vote. The applicant then withdrew his application.

The second application, CON2009-00005, was for a conditional use for “wrecking and salvage” on property zoned LI, and located in the City of Wichita on the west side of Mosley Avenue, south of Bayley Street. The applicant runs a towing service and they also store impounded vehicles for local law enforcement. Some of the towed or impounded vehicles are inoperable. Some of these inoperable vehicles become the property of the tow service operator, who ultimately sells the vehicles. The storage of the inoperable vehicles triggers the need for a “wrecking and salvage” conditional use permit. Staff recommended denial of this particular request, the MAPC recommended approval (7-5-1) and the City Council denied (7-0) the request.

CON2009-14 and ZON2009-13 were Sedgwick County applications for LI zoning and a conditional use for “wrecking and salvage” on property located east of West Street and north of MacArthur Road. The applicant for these two cases was the same as the first application discussed above. Staff recommended approval, and MAPC recommended approval (10-2). Since zoning is involved, this case has to be heard by the Board of County Commissioners. The case also has been appealed by nearby property owners, and is awaiting final action by the Board of County Commissioners.

With the denial of the first two cases, some planning commissioners voiced the opinion that the current zoning code was too restrictive for this type of activity; that the code should make a distinction between a true wrecking and salvage operation and a use that does not actively part out or dismantle inoperable vehicles. Based on that discussion, the Planning Commission asked staff to draft a text amendment that resolves those concerns.

The proposed solution is to create a new use type, “Motor vehicle impound lot.” A “Motor vehicle impound lot” is a lot, land or structure, or any part thereof, used for the storing of operable or inoperable “vehicles, motor,” that are held on the property for the purpose of impound and/or routine and periodic sales occurring at least three times a year. Materials not meeting the definition of “vehicle, motor,” such as appliances, bulky waste, junk, or other kinds of machinery or equipment not defined as “vehicle, motor” are prohibited from being parked, stored or placed on property approved for use as an “impound lot.”

“Motor vehicle impound lot” would be a permitted use by right in the LI and GI districts, subject to supplementary use regulations: 1) only a towing company, auto insurance pool operator or similar business properly licensed under applicable law may operate a motor vehicle impound lot; 2) motor vehicles stored on a “Motor vehicle impound lot” shall not be dismantled, parted out or salvaged; 3) the site must be enclosed by a fence or wall not less than eight feet in height and having cracks or openings not in excess of five percent of the area of the fence; 4) vehicles stored, parked or placed on the site shall not be visible at ground level from adjoining property; 5) the storage of any parts of vehicles is prohibited 6) vehicles shall be stored on an all weather surface and 7) the site is not contiguous to an arterial street, expressway or freeway.

The Advance Plans Committee of the MAPC met twice to review the proposed amendment, and, on May 21, 2009, approved the wording described in the two previous paragraphs. Another subcommittee of the MAPC that was established to review zoning code amendments also reviewed this item on June 4, 2009, and approved forwarding it to the full MAPC for consideration.

CASE HISTORY: The storage of inoperable vehicles has required “special permit” (in the pre-1996 zoning code) or “conditional use” approval (since 1996) in the E and F districts (pre-1996 code) and the LI and GI districts (since 1996), since at least 1954.

CONFORMANCE TO PLANS/POLICIES: *The Wichita-Sedgwick County Comprehensive Plan’s* Industrial land use Goal IV states the community should promote the expansion of the industrial base through the expansion of suitable industrial sites and, Objective IV.A states that industrial activities and

development should be promoted in a manner that is compatible with the built and natural environment. Residential land use Objective II. B. states that we should minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments. Some of the neighborhood plans have more detailed policy positions dealing with auto oriented uses. Staff incorporates those policies into their analysis of individual applications where applicable.

RECOMMENDATION: Adoption of the proposed amendment would provide an additional auto-related use type. From a zoning administration standpoint, the proposed amendment distinctly separates the storage of inoperable vehicles from wrecking and salvage operations. The storage of inoperable vehicles by towing services and insurance auto pools and similar users would become a use permitted by right in the LI and GI districts; eliminating the public hearing requirement for property already zoned LI and GI the community has required since at least 1954. These types of uses have generated neighborhood opposition, not just from residential users but business owners as well. However, the proposed amendment includes development standards designed to mitigate foreseeable impacts by requiring screening from ground view and the use of all-weather surfaces where vehicles are stored. Staff recommends approval of the proposed amendment.

This recommendation is based upon the following findings:

1. The zoning, uses and character of the neighborhood: The proposed amendment has consequences for those properties already zoned LI and GI since the proposal creates a new use type that would be allowed by right only in those districts.
2. The suitability of the subject property for the uses to which it has been restricted: Most properties already zoned LI and GI have been so zoned for decades and are located in older areas of the city near key railroad or arterial or highway routes.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The current code lumps the long term storage of inoperable vehicles in with wrecking and salvage. Wrecking and salvage require conditional use approval. The proposed ordinance makes the long term storage of inoperable vehicles a use by right in the LI and GI districts instead of requiring a public hearing.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Currently *The Wichita-Sedgwick County Comprehensive Plan* Commercial Location Guideline 6 states that commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other appropriate areas such as: the CBD fringe; segments of Kellogg; established areas of similar development; and , areas where traffic patterns, surrounding land uses and utilities can support such development. Industrial land use Goal IV states the community should promote the expansion of the industrial base through the expansion of suitable industrial sites and, Objective IV.A states that industrial activities and development should be promoted in a manner that is compatible with the built and natural environment. Residential land use Objective II. B. states that we should minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments. Some of the neighborhood plans have more detailed policy positions dealing with auto oriented uses. Staff incorporates those policies into their analysis of individual applications where applicable.
5. Impact of the proposed development on community facilities: Public facilities should not be impacted by the proposed change.
6. Opposition or support of neighborhood residents: There has been documented public opposition to individual applications that required conditional use approval under the current code. This proposed amendment will eliminate the public hearing requirement for these types of uses on property already zoned LI and GI, precluding the opportunity for public input.

DALE MILLER, Planning Staff presented the Staff Report. He reported that the proposal has been presented to five of the six District Advisory Boards and all have recommended denial of the proposal. He said from a laymen's standpoint, they find it hard to find a distinction between an impound lot and a wrecking and salvage operation. He said another concern was that an impound lot may have 24-hour a day activity. He commented that he believed several members of the public were present to express their opposition to the proposal.

FOSTER asked **MILLER** to define a conditional use.

MILLER said under the Unified Zoning Code (UZY) there are two types of uses; those that are permitted "by right" meaning those uses listed under a particular zoning district that do not require a public hearing; and a "conditional use" which is an activity that may be allowed in a particular zoning district but requires a public hearing.

FOSTER clarified that the term "motor vehicles" would include buses, motor homes and trailers that would be over eight feet tall.

MILLER said that was correct.

FOSTER referred to condition #1 and asked if a towing company could operate an impound lot and conduct their towing services 24-hours a day.

MILLER responded yes.

Responding to **FOSTER's** question concerning security lighting, **MILLER** explained that the UZY requirement was that lighting not escape the boundary of the property.

FOSTER asked for a city the size of Wichita, how many impound lots would be needed.

MILLER said he did not know.

FOSTER referred to the use regulations and said he did not see anything about height control.

MILLER briefly reviewed condition #4 which he said takes care of that issue.

CHAIRMAN DOWNING clarified that a vehicle storage facility was authorized "by right" in both Limited Industrial (LI) and General Industrial (GI). He also asked what about the screening requirements.

MILLER said the use is authorized "by right" and briefly reviewed the standard screening requirements of the UZY.

JIM RUANE, 7729 KILLARNEY COURT said he was present to speak in favor of the item. He briefly summarized the history of the proposal. He said this item wasn't about any specific property, but was an issue about defining permissible land uses. He said common sense and on-going compliance requirements are not thrown out the window. He said impound lots serve a very important function, especially for law enforcement. He said impound lots can exceed minimum requirements, but it was not fair to assume that they will run wild with this new zoning classification. He said the new definition is a logical category. He said impound lots are not chop shops and processing facilities. He said vehicles are simply stored until they are redeemed, and if not redeemed, then the Police Department conducts sales on a quarterly basis. He mentioned the new, more restrictive DUI law that if someone is arrested with a prior history or is on diversion for DUI, then their vehicle will be impounded. He said presently, there were not enough places for those vehicles to go. He concluded by saying that he was speaking in behalf of all non junk yards. He said DAB's are unlikely to approve this type of proposal and added that is why this Commission is needed. He said the "not in my backyard" attitude was poor land use planning.

FOSTER said he would make one comment in disagreement with **MR. RUANE** in that it was his understanding that staff was asked to look at the incompatibility of the definition between impound lot and wrecking and salvage yard. He said he did not believe the charge was to facilitate this particular use.

RUANE said he stood corrected on that. He said he thought the seven recommendations by staff should more than address the concerns of the DABs.

HENTZEN asked legal if the vote the Commission took was on the application or the different subject of asking staff to look at the wording of the Code.

BOB PARNACOTT, COUNTY COUNSELOR suggested referring back to the minutes where the action was taken.

MILLER said his perception was that the Commission asked staff to take look at the current code and the fact that these services are currently defined as wrecking and salvage and see if there was a way to separate motor vehicle impound lot activities from wrecking and salvage lot activities.

PARNACOTT quoted the motion which stated "To have the Advance Plans Committee look at the definition of Salvage Yards in the Unified Zoning Code." He added that "**MARNELL** clarified that he was interested mainly in the salvage yard issue; however, he said staff may come up with other issues. He said he was interested in modifying the UZC not rewriting the entire code."

JOE LANG, CHIEF DEPUTY CITY ATTORNEY mentioned a series of cases that occurred previous to the Commission's request.

DIRECTOR SCHLEGEL explained that the MAPC already made a recommendation on the case that initiated the discussion of the definition of impound lots versus salvage and wrecking yards and that was how this proposal was developed.

LANG clarified that this will be the first amendment to the UZC that was just recently approved by the MAPC.

DAVE WEATHERSON, 722 E. ZIMMERLY STREET said he is a lifelong resident of Wichita who owns and operates a printing firm; operates over 150,000 square feet of commercial property; and has a vested interest in the decision the Commission makes on this issue. He said he was present in opposition to the proposal. He suggested that not all areas zoned LI or GI are areas where impound lots should be located. He said this amendment would allow impound lots near 37th and Rock Road in the Willowbend area, Central and Webb Road in the Lake Point and Waterfront areas, 29th and Ridge near Forest Lake and Barefoot Bay, some areas of Old Town and areas near the new Intrust Arena. He said no matter what you call them, impound lots and salvage yards all look the same. He said they both hold the same wrecked, burned out or vandalized cars; they both leech the same toxic chemicals into the groundwater; and they both attract rodents and mosquitoes that can become health hazards. He said fencing does not solve these problems and that sometimes the fencing looks as deplorable as the contents it is trying to screen. He said in some ways impound lots are worse than salvage operations because they operate 24-7 and bring traffic into an area both day and night. In addition, he said they hold numerous auctions that create traffic and spread debris throughout the area. He said impound lots are not compatible with other businesses in the LI and GI category as was noted by city staff in their original report to deny the Bailey and Mosley site application. He said if the MAPC allows impound lots into these areas, other business will not necessarily follow. He said impound lots generally discourage other businesses from entering an area and existing businesses are more likely to leave the area over a period of time. He said he has personally purchased two properties that are within 75 feet of the Bailey and Mosley site and invested an excess of \$2 million in their renovation. He said if there had been an impound lot in that area, he would not have purchased those properties in the first place and they would not be in the first class condition that they are

in today. He said no commercial developer ever seeks to locate near an impound or salvage operation. He said impound lots will reduce property values to surrounding properties because they require little investment compared to the surrounding businesses that have much larger investments in plant and equipment. He said they devalue an area due in nature to its product and by-products. He said since there is no formal oversight of these operations they always tend to deteriorate and rarely maintain the status quo or get any better. He said he did not understand the logic of taking one of the most unsightly industries, one that leeches toxic fluids and creates health issues, and spreading it throughout the City. He suggested creating one or two impound/salvage yard districts with oversight, berms, fencing or screening, and pollution, rodent and mosquito control and traffic management with access to highways and railroads to accommodate the operation thereby creating something positive instead of a negative. He concluded by saying that the zoning code was not broken and did not need to be fixed; that it was working the way it was intended to work. He said amending the code to allow no input, protest or oversight will discourage development, run off existing businesses and cause gradual deterioration of areas.

MOTION: To allow the speaker one additional minute.

DENNIS moved, **MILLER STEVENS** seconded the motion and it carried.

He said property owners do have rights and when a person buys or invests they are also buying into that neighborhood. He said they must have zoning protection for the neighborhood in order to preserve and protect their investment. He concluded by stating that zoning codes were developed to provide that protection. He said this amendment changes the intended use of the area they bought into and does not allow them to have any input or due process against a new use that adversely affects them.

DENNIS asked for clarification regarding proximity of these types of activities to arterial streets.

MILLER said there is the potential for these activities to be located along an arterial street as long as they have 100-150 feet setback but it depends on the location. He mentioned the operation along West Street. He said theoretically, the way the proposal is written, these operations could go into any GI or LI zoning.

MITCHELL mentioned the comment that property owners have rights beyond their property line and asked **MR. WEATHERSON** where that came from.

WEATHERSON responded that was real estate law.

MILLER-STEVENS asked what permits would be required for an impound lot.

MILLER said he understood from the Office of Central Inspection (OCI) that impound lots would still be required to obtain State permits, but from a zoning standpoint, they would not be required to have a public hearing.

MILLER-STEVENS asked what kind of permits would be needed and if those permits would make this process null and void.

MILLER referred the question to the legal staff.

LANG commented that he believed there were business licenses and operational permits required by State Law and City Ordinance.

MILLER-STEVENS clarified then the impound lots would be a more restrictive use than wrecking and salvage lots.

LANG responded not necessarily, if they have permits to operate several different businesses and they all fit within the zoning code, they could operate from that lot.

MILLER-STEVEENS clarified then there are permits that would undermine this definition and use. She said, for example, if an operation were to go into this area as an impound lot; they could then acquire permits from the State to do other things.

MILLER said the State requires that businesses are properly zoned in order to obtain State permits.

VICKY CHURCHMAN, 1357 S. BROADWAY said she was not representing any one particular organization or business. She referred to Commissioner **HENTZEN's** comment about the business that initiated this proposal being done and said there would not be an attorney here today representing that business if they were done. She said if this proposal is passed, that business would automatically be allowed to operate at the location they previously requested without anyone's permission. She said a wise person is always open to new ideas. She said she was not opposed and knew there had to be impound lots. She said she liked **MR. WEATHERSON's** idea about a specific zone for these types of activities. She said this definition as proposed could create a monster. She gave several examples of what could happen in LI zoning if the proposal is approved as written. She mentioned the requirement for eight foot fences and said some of the rusted, corrugated fencing is uglier than what it is supposed to be screening. She mentioned a comment by a DAB III member who seemed to think that this proposal would generate more revenue for OCI through enforcement activities. She said in many ways an impound lot is worse than a salvage and wrecking yard because they have to be open 24 hours a day. She also mentioned auctions and the traffic they generate.

JOHN STEVENS, 3125 E. BOSTON said when the Wichita Independent Neighborhood Association (WIN) looked at this proposal, they felt that it would remove the right to come and speak on an item from neighborhoods. He complimented planning staff on their presentation to the DAB and added that five of the six DAB's have recommended denial of this proposal. He concluded by asking that the Commission keep this issue open for public input and not close neighborhoods out. He said these types of uses have generated opposition by both business owners and neighbors as well.

KENNY JOHNSON, 11423 WEST BEKEMEYER said he was present to support the proposed changes. He read the current definition for wrecking and salvage yard in the UZC and stated that it was incorrect for vehicle impound lots since they only met about 25% of the definition at best. He said he felt it was appropriate for the Commission to send this issue to the Advance Plans Committee for development of a definition for impounds lots. He briefly reviewed the excerpt of the March 5, 2009 MAPC minutes, in particular the remark made by Commissioner **MARNELL** about impound lots being thrown into a box because that was as close as the Code allowed. He also mentioned Commissioner **HENTZEN's** remark about the proposed location of the impound lot being in a heavily industrialized area, not on an arterial street. He said he felt it was appropriate to develop a specific definition for vehicle impounds lot. He said continuing to define these lots as wrecking and salvage lots was incorrect.

DALE CHURCHMAN, 1357 S. BROADWAY said he believes one thing needs to be answered, and that was the idea that these impound lots are not salvage yards. He said a friend of his told him salvage yards get their inventory from vehicle impounds lots. He asked at what point are vehicles not "salvage" and at what point is a wrecked vehicle not something that looks like it belongs in a salvage yard. He challenged Commission members to drive down 21st Street and see if they could distinguish which were salvage yards and which were vehicle impound lots. He said "if it is not broke, don't fix it." He said what is in place now works, that people have the right for a hearing and a right to petition. He said what is being proposed is going to be a hassle for neighborhoods, staff and Planning Commissioners. He concluded by saying that he felt it was not a good proposition and that it would not work.

FOSTER observed that the discussion on this item speaks to the heart of what a conditional use is all about; that if the requested use is not compatible, then it needs to be discussed. He referred to the

proposal which included seven conditions or use regulations that needed to be met in order for an item to be approved. He concluded by saying that of the three cases that were heard by the Commission, one of them was approved, which said to him that the current process is working.

HENTZEN referred to a previous application that was denied by the City Council, so that is why he felt that the application was done. He explained that since these types of applications generated so much discussion, the Commission asked staff to see what they could come up with and he said he believed staff has done a good job. He said he liked the idea of defining an area for impound yards.

DENNIS said he supported the original motion to send this item to the Advance Plans Committee, which he sits on. He said these impound lots do not fit into the definition of wrecking and salvage yards. He said he still believes something needs to be done and commented that is why public hearings are held to come up with other opinions and ideas. He said if what is done ends up locating activities in areas that are not appropriate because they can be located there “by right”, then perhaps the issue needs to be referred back to the Advance Plans Committee for further study.

MARNELL said he felt some of the testimony the Commission heard today is pretty far “out in left field.” He said he did not believe there would be impound lots in Lake Point or Reflection Ridge. He said he believed the practicality of land values would take care of that question. He said sometimes people purchase land in industrial areas because it is cheaper and not prime industrial property and then they don’t want an industrial neighbor next to them. He said he believes they are pretty close to what was requested and that was a definition of impound lots to separate them from wrecking and salvage yards. He asked legal staff since this was a public hearing and the Commission had taken testimony on the proposal, what if the Commission were to change “by right” in LI and GI districts and add “by special permit” which would be a conditional use permit. He said that would not keep cases from coming to the MAPC for hearing and he did not have a problem with that. He said he thought the definition of an impound lot was correct. He asked legal staff if they Commission could make that kind of a change to the proposal.

DIRECTOR SCHLEGEL clarified that **MARNELL** wanted to amend the proposal to change use” by right” in the LI and GI districts to “*a conditional use permit*”.

MARNELL responded yes.

BOB PARNACOTT said he and **JOE LANG** have discussed the issue and they believe the Commission can recommend that the text of the proposal be changed to read “conditional use” instead of “by right”. He said currently there are a number of uses in LI and GI zoning that require conditional use permits and a number of uses that require supplemental regulations. He said the motion could reflect a text amendment.

MARNELL commented that he thought staff did a good job writing up the proposal and he felt supplemental regulations would be good wherever these types of activities occur. He added that he thought this would be a good addition to the Code.

MOTION: To approve subject to staff recommendation with an amendment in the verbiage from permitted use “by right” to permitted use with “*a conditional use permit*”.

MARNELL moved, **J. JOHNSON** seconded the motion, and it carried (10-2).
MITCHELL and **HENTZEN** – No.

HENTZEN said he was not sure the Commission wanted to eliminate “by right” in GI and LI districts. He asked how many items come up “by right” in those zoning districts.

DIRECTOR SCHLEGEL explained that there was a whole list of “by right” activities in the UZC; however, he said this would only apply to impound lots in LI and GI districts.

FOSTER clarified that they were amending the UZC to add the definition of impound lot with a conditional use permit in LI and GI districts.

PARNACOTT commented that was correct.

MITCHELL said he would not support the motion because this whole exercise was to remove the conditional use requirement for something that is clearly outside the conditional use requirements of a salvage yard. He said this motion will not eliminate the problems the Commission experienced with the previous cases.

DENNIS said maybe he understood the situation a little differently from **MITCHELL**. He said he felt the problem was the compartmentalization of lumping impound lots into salvage yards. He said he felt this other definition was needed and that he would support the motion.

(*J. Johnson out)

8. **Case No.: DER2009-00006** - Request The City of Maize Seeks Unilateral Annexation of Various Tracts of Land Located Adjacent to the City of Maize - Resolution No. 465-09

Background: On June 15, 2009, the City of Maize passed Resolution No. 465-09 authorizing a public hearing on August 17, 2009, for the purposes of considering the unilateral annexation of approximately 54 various tracts of lands located adjacent to the City of Maize.

Kansas statutes require that the planning commission review the proposal and make a finding of compatibility or incompatibility with any adopted land use or comprehensive plans related to the area and the annexing city.

After review by staff, it has been determined that four of the tracts (located northeast and adjacent to the City of Maize) proposed for unilateral annexation fall outside the City of Maize 2030 Urban Growth Area as designated within the Wichita-Sedgwick County Comprehensive Plan *Preparing for Change*, adopted and updated by the Metropolitan Area Planning Commission and the Board of County Commission in May 2005. Staff has therefore concluded that the proposed unilateral annexation by the City of Maize is not consistent with the Wichita-Sedgwick County Comprehensive Plan.

Recommended Action: That the Metropolitan Area Planning Commission pass a motion finding the unilateral annexation proposed by Resolution No. 465-09 of the City of Maize to be inconsistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

FOSTER recused himself from the item stating that his company had recently done park planning for the City of Maize.

DAVE BARBER, Planning Staff presented the Staff Report.

MCKAY asked whether the City of Wichita has been approving zoning cases along Ridge Road up to 53rd Street.

BARBER said the tracts in question are neither in the City of Maize or the City of Wichita 2030 Urban Growth Area.

MCKAY asked but isn't the City of Wichita going to annex that area?

BARBER responded that he was not aware of any plans.

MITCHELL clarified that the areas in question were adjacent to the City of Maize.

BARBER said that was correct.

DENNIS asked about deleting the four properties in question from the proposed annexation request, or was this an all or nothing proposal?

BARBER said that the Commission could find that the annexation request is consistent with the adopted Wichita-Sedgwick County Comprehensive Plan except for those four tracts outside the Maize 2030 Urban Growth Area.

MOTION: To approve unilateral annexation of various tracts of land as requested by the City of Maize and that the request is consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

MITCHELL moved, **HENTZEN** seconded the motion.

MARNELL said that this was baffling because the annexation request was either consistent or not consistent. He said if the motion said the request was consistent except for those four lots, then he could support that motion but he could not support the current motion that says this annexation request is consistent. He said the Commission wasn't doing anything other than wasting their time on these things because State Statute requires the Planning Commission to make a finding. He added that the Commission had no authority other than finding that a request was consistent or not consistent with the Comprehensive Plan. He said it is clearly inconsistent but only in a minor way.

SUBSTITUTE MOTION: To approve unilateral annexation of land with the exception of the four tracts outside the City of Maize 2030 Urban Growth Area and find that the request is consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

VAN FLEET moved, **MARNELL** seconded the motion and it failed.

PARNACOTT referenced legislative research on this issue dating back to when the requirement was put into the law. He said the intent was that this be an advisory guidance from this body to the City of Maize and used at the public hearing on the annexation to bolster the argument as to whether the annexation was reasonable or not reasonable. He said the owners of the four properties that are outside the urban growth area could use that argument that their properties not be annexed.

CHAIRMAN DOWNING said it was his understanding that this was an administrative action and not a public hearing; however, he asked Mr. LaMunyon if he would like to comment on the item.

RICHARD LAMUNYON, CITY ADMINISTRATOR, CITY OF MAIZE said when he first started at Maize; the City was one mile geography. He said currently the City is six miles geographically. He said they have agreements with the City of Wichita on where the southern, eastern, and western boundaries of Maize will be. He added that the area being discussed was a consensual annexation and added that most of the areas annexed by the City of Maize over the years have been consensual, and that this unilateral annexation was a way for Maize to clean up its boundaries. He said the intent of the Maize City Council was to go from 53rd St and Ridge Road north to the river on the west side for the City's eastern boundary and also west to 151st Street West. He said the cities have an agreement stipulating that the City of Wichita cannot grow north of 37th Street until they reach 135th Street West. He referenced a map and explained boundaries between Maize and Wichita. He mentioned the area of 37th Street South and the confusion about the boundaries in that area and how they were trying to avoid that problem in the future.

He admitted that the City of Maize has grown outside the Maize 2030 Urban Growth Area boundary as depicted in the Wichita-Sedgwick County Comprehensive Plan. However, he wanted the Commission to know the intent of the request.

HENTZEN asked if the people who own the four parcels wanted to be annexed.

LAMUNYON said they have not heard from those property owners.

ORIGINAL MOTION: To approve unilateral annexation of various tracts of land as requested by the City of Maize and that the request is consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

MITCHELL moved, **HENTZEN** seconded the motion, and it carried (8-2-1).
MARNELL and **MILLER STEVENS** – No. **FOSTER** – Abstained.

9. Conformity of the 2010-2014 Sedgwick County Capital Improvement Program with the Wichita-Sedgwick County Comprehensive Plan

Background: On July 2, 2009, the Advance Plans Committee received presentations on the proposed *2010-2014 Sedgwick County Capital Improvement Program (C.I.P.)*. Copies of the proposed County C.I.P. have also been distributed to all members of the MAPC for their review prior to a determination of conformity with the Wichita-Sedgwick County Comprehensive Plan scheduled for the MAPC meeting on July 23, 2009.

Analysis: Section 12-748 of Kansas statutes requires a planning commission to review the capital improvement program of its municipality to make a finding as to whether the proposed public improvements, public facilities or public utilities conform to the adopted comprehensive plan. If the planning commission finds that any such proposed public improvement does not conform to the plan, the commission shall submit in writing to the governing body, the manner in which such improvement does not conform.

Staff has reviewed the proposed *2010-2014 Sedgwick County Capital Improvement Plan* and has determined that the public improvements itemized therein are in conformity with the adopted Wichita-Sedgwick County Comprehensive Plan. The Advance Plans Committee also passed a unanimous motion at its meeting of July 2nd recommending that the MAPC find the proposed *2010-2014 Sedgwick County Capital Improvement Plan* to be in conformity with the Wichita-Sedgwick County Comprehensive Plan as amended.

Recommended Action: That the Metropolitan Area Planning Commission find the proposed *2010-2014 Sedgwick County Capital Improvement Plan* to be in conformity with the adopted Wichita-Sedgwick County Comprehensive Plan as amended.

DAVE BARBER Planning staff presented staff report

PETE GIROUX, Senior Management Analyst, Sedgwick County Budget Office introduced **JIM WEBER**, Deputy Director of County Public Works. **GIROUX** reviewed a PowerPoint presentation commenting that by popular request, they have reduced the level of detail and will only discuss the significant projects, which in most cases are over \$1.0 million. He explained that the purpose of the CIP was to identify capital needs for various county functions and departments; prioritize all capital needs within the county government into a single coordinated plan; fit the prioritized projects into the resources available in the County Budget; and communicate the plan to the citizens. He gave a brief overview of the Plan's facility projects.

JIM WEBER reviewed road, bridge and drainage projects by year, including projects funded with Stimulus money. He briefly mentioned the infrastructure preventative maintenance program and several “safety” projects associated with new high schools in Valley Center and Goddard.

(***SHERMAN** out @3:59 P.M.)

VAN FLEET asked what funding was included in the “other” column.

WEBER responded federal money, special assessments, and monies from agreements with other municipalities. He said they refer to those funds as “Other People’s Money” or “OPM.” He said the County’s funding sources are sales tax and bonds.

GIROUX briefly mentioned the County’s debt policy and said they have top ratings from all the ratings agencies, which in turn keeps their costs low. He also mentioned cash reserves, sales tax revenue and OPM. He said the plan addresses the County’s immediate needs, provides a viable plan for the planning years while living within available resources and the established debt policy. He said the proposal was expected to be approved with the County Budget at the August 5, 2009, Board of County Commissioners meeting. He concluded by requesting that the Planning Commission find the *proposed 2010-2014 Sedgwick County Capital Improvement Plan* to be in conformity with the adopted Wichita-Sedgwick County Comprehensive Plan as amended.

MOTION: To find the *proposed 2010-2014 Sedgwick County Capital Improvement Plan* to be in conformity with the adopted Wichita-Sedgwick County Comprehensive Plan as amended.

MCKAY moved, **HENTZEN** seconded the motion and it carried (10-0).

CHAIRMAN DOWNING mentioned updates on two administrative projects.

MILLER-STEVENS said she agreed to inquire about obtaining security passes for Commission members to expedite getting through security on the first floor. She said she has drafted a letter to Robert Layton for review and signature by the Commission.

CHAIRMAN DOWNING also asked if the Commission was satisfied with the current seating arrangement.

MARNELL asked **MILLER** why the Unified Zoning Code item was taken to the District Advisory Boards (DAB) prior to the Commission taking action on the item.

MILLER said planning items are typically taken to the DAB’s first if that can be arranged. He said that is the normal procedure so that the MAPC will have the benefit of the DAB’s comments.

MARNELL said he believes now they have a situation, and it may just be procedural, that the MAPC passed something substantially different from what was presented to the DAB’s. He said it seems to him that this issue should probably go back to the DAB’s before it is presented to the City Council.

MILLER said that thought had occurred to him.

MARNELL said he was a little frustrated with feeling like staff was at times working against the Commission who had requested the change and worked on the issue at the DAB's. He said it sounded like that to him, although he admitted that he had not attended any of the DAB meetings where the item was presented and that he was only taking that from what he heard at the meeting today. He said he did not think that was appropriate if in fact that is what took place.

MILLER said he could only say, in the most extreme exception he took to **MR. MARNELL's** comments, that if **MARNELL** had been there, he would have heard that staff was as neutral and even handed as could be knowing that at the Advance Plans Committee, it was staff's opinion that doing this was a mistake from the start.

MARNELL said he realized that and that he appreciated the candor. He asked if the Commission needed to take some kind of action for this to go back to the DABs.

MILLER said they could if they liked with a motion direct staff to do so, but he thought given the change, staff would do that as a matter of course.

MOTION: To direct staff to return the UZC amendment item to the DAB's before it is presented to the City council.

MARNELL moved, **VAN FLEET** seconded the motion, and it carried (8-2).
HENTZEN and **MITCHELL** – No.

MITCHELL said he would not support the motion because he said he did not feel it was appropriate for the DABs to be giving the MAPC advice on zoning items.

MARNELL said he did not disagree with what **MITCHELL** said at all; however, with this case the DABs would be giving advice to the City Council, which is why the DABs were created, not to give advice to the MAPC.

DENNIS said he would support the motion because if it does not go back to the DABs it will give the Council the impression that the DABs are in disagreement, but in fact the MAPC passed something totally different then what was reported to the DABs.

MCKAY asked if it would it be appropriate to provide a letter to the City Council explaining what the DABs disapproved and what the MAPC approved.

DOWNING said he would prefer personally that it go back to the DABs even though it was an additional requirement for staff. He said if they don't let the DABs have a second look at the revised proposal, the City Council and County Commission will probably not be able to sort out the differences between the two DAB presentations.

MCKAY said he just didn't want staff to have to "rehash" the whole situation, but just let the DABs know what the MAPC passed.

Responding to **MARNELL's** question, **MILLER** said Planning Staff only attends DAB meetings when there are planning items on the agenda.

MARNELL said he was not trying to make unnecessary work for staff.

MILLER said it made sense for staff to go back to the DABs because what the MAPC approved is significantly different from what the DABs heard.

MARNELL said he did not feel it was his place as a Planning Commissioner to lobby the City Council and explain that what the MAPC approved was significantly different then the proposal that went to the DABs.

MCKAY said he thinks the issue can go back to the DABs but just to briefly explain that the “by right” was removed and replaced with “conditional use permit”.

FOSTER asked staff a procedural question about how items are presented to the City Council.

MILLER said Planning Staff will contact each neighborhood assistant, explain what happened and see if they think it should be reheard by the DAB.

The Metropolitan Area Planning Department informally adjourned at 4:17 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2009.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)